FORM DS-323
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DEPARTMENT OF STATE A/DOC/OUTGOING AIRGRAM

REVIEWED BY KWalker DATE 9-30-82

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Department of State

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A-85 June 6, 1952

SUBJECT: FCN Treaty. Informal discussions. Embassy despatch 13, May 6, enclosure No. 7.

Protocol, paragraph 3-bis. The Japanese counter proposal as set forth on pages 6-7 of reference enclosure is acceptable, with a revision in the first sentence. That is, the Department proposes that the passage beginning "which are left", to the end of the sentence, be made to read "with respect to which there has been failure to comply with marking requirements established to assure that the true geographic or commercial origin of such goods is correctly represented". As so revised, the provision would then read in full as follows:

> "With reference to Article XIV, paragraph 4, it is understood that either Party, acting in accordance with its laws, may prohibit the importation into its territory, or seize, or otherwise restrict or regulate the sale of any goods with respect to which there has been failure to comply with marking requirements established to assure that the true geographic or commercial origin of such goods is correctly represented. Furthermore, each Party agrees to take appropriate steps to prevent misrepresentations, direct or indirect, that goods produced or sold in or exported from its territory originate within the territory of the other Party or any distinctive place within such territory."

The revision proposed by the Department would put the passage in question in terms of general principle, which from the viewpoint of drafting technique is preferable to an attempt to spell out the detailed characteristics of the regulations envisaged. The attempt to spell out detail is not only unnecessarily wordy but also open to the danger that inadvertently some future contingency may be not properly anticipated. The Department appreciates the logic underlying the Japanese suggestion for the wording "which are left unmarked . . in an attempt...etc." and trusts that the substitute wording proposed above will care for the contingency they visualize as well as all others.

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SGK SDM WJR NA L/E BPT FTC (second sentence cld. in draft via Rusch 6-3) KW

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